(1) Agreed special damages	...	$ 4,877
(2) Loss of earnings up to date of judgment	...	14,400
(3) Future loss of earnings	...	22,300
(4) Services of a maid up to date of judgment	...	9,000
(5) Services of a maid for the future	...	13,900
(6) Pain and suffering and loss of amenities	...	75,000
	Total	$139,477

The above items (1), (2) and (4) shall bear interest at 4% per annum from the date of the accident; item (6) shall bear interest at 6% per annum from date of service of the writ; the judgment sum of $139,477 shall bear interest at 8% per annum from date of judgment until realisation.

The defendants will also pay the costs of the action.

Order accordingly.

Solicitors: *Richard Ho & Co.; V.P. Nathan & Partners.*

SALIH BIN MOHAMED v. LOH KIM FOON

[A.C.J. (Hashim Yeop A. Sani J.) March 16, 1982]
[Kuala Lumpur – Civil Appeal No. 48 of 1981]

Damages – Quantum – Appeal against award for general damages – Whether there was evidence to support magistrate's finding.

The defendant appealed against the learned Magistrate's award of $5,800 for general damages. The appellant contended that particulars of the injuries regarding partial loss of hearing were not pleaded and that there was no evidence to support the finding of the magistrate.

Held, dismissing the appeal: there was sufficient evidence for the magistrate to come to his conclusion.

CIVIL APPEAL.

S.S. Muker for the appellant.
K.C. Chew for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani J.: This was an appeal against quantum only in a running down case where the learned Magistrate made an award of $5,800 for general damages. The appellant was unhappy about the award because it included an item to cover the partial loss of hearing of the Plaintiff/Respondent. The appellant contended firstly that particulars of these injuries were not pleaded and secondly there was no evidence to support the finding of the Magistrate.

As regards the first question a glance at the Statement of Claim would reveal that the physical injuries sustained by the Plaintiff were set out and the claims were for general and special damages. Since there was a specific claim for general damages it was not necessary in my view for the statement of claim to also plead partial loss of hearing which was really a matter of evidence.

The next question is whether there was sufficient evidence for the learned Magistrate to come to the conclusion on the balance of probabilities that the injury (loss of partial hearing) was sustained as a result of the accident concerned. I think there was. The medical report dated October 1978 (page 38 of record) was in the agreed bundle of documents. There was clear evidence of the injury in that report. The history of that injury was set out in the testimony of the Plaintiff (at pages 16-18 of the record) at page 16 he said:

"I do not remember what happened in hospital but I did remember some people cleaning wound on my face. They also stitched wound on my face. It was 8 to 9 stitches. About one and half month after the accident I realised that I felt pain in my right ear. The pain was off and on. I consulted a Chinese sinseh to cure the pain. The Chinese sinseh was from Penang by the name of Chai Kew. He gave me Chinese herbs. I took the Chinese medicine for 5 to 6 months. The medicine did help me but the pains still come and go. Then I go to General Hospital in Penang. I went to Penang General Hospital to treat my ear in July 1978."

At page 18 he denied that the partial loss of hearing was not caused by the accident.

The award was a global award covering all the injuries sustained including the loss of hearing. The gist of the argument by the appellant against the award of the Magistrate was that the award was not supported by evidence not that the Magistrate misconstrued the evidence. In this case since there was in my opinion sufficient evidence for the Magistrate to come to his conclusion the appeal must fail.

The appeal was dismissed with costs.

Appeal dismissed.

Solicitors: *Lovelace & Hastings; Chew & Co.*